

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BRIAN KERRY O'KEEFE,

*Petitioner,*

vs.

ROBERT LEGRAND,

*Respondent.*

No. 3:14-cv-00477-RCJ-VPC


ORDER

This habeas action brought by a Nevada state inmate comes before the Court for initial review of the papers presented.

First, petitioner Brian Kerry O'Keefe has filed an application to proceed *in forma pauperis* along with his petition for a writ of habeas corpus. Based on the current information about petitioner's financial status, including any additional information he may have provided, the Court finds that he is able to pay the full fee pursuant to 28 U.S.C. § 1915.

Second, petitioner did not use the required petition form. Under LSR 3-1 of the local rules, petitioner must file a habeas petition on the Court's required § 2254 petition form. Petitioner instead used a § 2241 petition form. While petitioner complains the state lacked jurisdiction to proceed with his third trial, the determination of whether a petitioner must proceed under 28 U.S.C. § 2254 is a status inquiry directed to the source of the petitioner's custody rather than the target of his challenge. *See, e.g., Shelby v. Bartlett*, 391 F.3d 1061, 1063-64 (9th Cir. 2004). Petitioner is in custody pursuant to a Nevada state conviction. He therefore must proceed under § 2254, and he accordingly must use the Court's required § 2254 form as required by LSR 3-1.

**IT IS FURTHER ORDERED** that the Clerk of Court shall SEND petitioner two copies each of a § 2254 habeas petition form, along with one copy of the instructions for the form and of the papers he submitted at docket #1-1.

  
ROBERT C. JONES  
United States District Judge